

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
CENTRAL DIVISION

FILED  
SEP 1 2009  
  
CLERK

KERWIN MILLER,

Petitioner,

-vs-

UNITED STATES OF AMERICA,

Respondent.

CIV 09-3019  
CR 06-30029

OPINION AND ORDER

Petitioner pleaded guilty to conspiracy to commit tax fraud and was sentenced on September 10, 2007, to 30 months custody. He is still in federal custody serving that sentence. He filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241 challenging his conviction. Petitioner contends that this court lacked jurisdiction to convict and sentence him. The purported basis of such claim is that no quorum was present when the House of Representatives passed the jurisdictional statute, now codified at 18 U.S.C. § 3231.

Where a statute specifically addresses the particular issue at hand, it is that authority, and not the All Writs Act, 28 U.S.C. § 2255, that provides a basis for relief. Carlisle v. United States, 517 U.S. 416, 429, 116 S.Ct. 1460, 1467, 134 L.Ed.2d 613 (1996). “A challenge to a federal conviction . . . is most appropriately brought as a motion under 28 U.S.C. § 2255.” United States v. Lurie, 207 F.3d 1075, 1077 (8th Cir. 2000).

Now, therefore,

IT IS ORDERED that the petition for a writ of habeas corpus pursuant to 28 U.S.C. 2241 is denied.

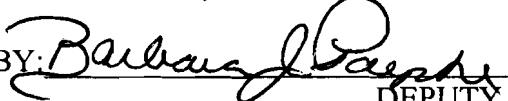
Dated this 8<sup>th</sup> day of September, 2009.

BY THE COURT:

  
CHARLES B. KORNMANN

United States District Judge

ATTEST:  
JOSEPH HAAS, CLERK

BY:   
DEPUTY  
(SEAL)